

AMENDED IN ASSEMBLY APRIL 12, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1954

Introduced by Assembly Members Skinner and V. Manuel Perez

February 17, 2010

An act to amend Sections 399.2.5 and 399.12 of the Public Utilities Code, relating to electricity.

LEGISLATIVE COUNSEL'S DIGEST

AB 1954, as amended, Skinner. Electrical transmission: renewable energy resources.

Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations, as defined. Existing law, the Public Utilities Act, prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction (certificate of public convenience and necessity). Existing law requires the CPUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem new transmission facilities necessary to the provision of electric service if the CPUC finds that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard. That law additionally requires the CPUC, upon finding that new transmission facilities are necessary to facilitate achievement of the renewable power goals established under the renewables portfolio standard, to take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory

Commission are fully reflected in any retail rates established by the commission.

~~This bill would require the CPUC, in acting upon an application by an electrical corporation for a certificate of public convenience and necessity, to deem for new transmission facilities is necessary to the provision of electric service if the CPUC finds that new transmission facilities are reasonably necessary or appropriate to facilitate achievement of the renewables portfolio standard. The bill would require the CPUC to provide assurance of the eligibility for recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of transmission facilities in certain circumstances and to allow recovery in retail rates of any increase in transmission costs if not approved by the Federal Energy Regulatory Commission if the CPUC determines the costs were prudently incurred pursuant to a specified law authorize the CPUC to approve the recovery in retail rates by an electrical corporation of certain costs for transmission facilities that are incurred in certain circumstances if not approved for recovery in transmission rates by the Federal Energy Regulatory Commission.~~

This bill would revise and recast certain of the definitions applicable to the California Renewables Portfolio Standard Program.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 399.2.5 of the Public Utilities Code is
- 2 amended to read:
- 3 399.2.5. (a) Notwithstanding Sections 1001 to 1013, inclusive,
- 4 an application of an electrical corporation for a certificate
- 5 authorizing the construction of new transmission facilities is
- 6 necessary to the provision of electric service ~~for purposes of~~
- 7 ~~Section 1003~~ if the commission finds that the new facility ~~is~~
- 8 ~~reasonably necessary or appropriate to facilitate~~ facilitates
- 9 achievement of the renewables portfolio standard established in
- 10 Article 16 (commencing with Section 399.11).
- 11 (b) With respect to a transmission facility described in
- 12 subdivision (a), the commission shall take all feasible actions to
- 13 ensure that the transmission rates established by the Federal Energy
- 14 Regulatory Commission are fully reflected in any retail rates

1 established by the commission. These actions shall include all of
2 the following:

3 (1) Making findings, where supported by an evidentiary record,
4 that those transmission facilities provide benefit to the transmission
5 network and ~~are reasonably necessary or appropriate to~~ facilitate
6 the achievement of the renewables portfolio standard established
7 in Article 16 (commencing with Section 399.11).

8 (2) Directing the utility to which the generator will be
9 interconnected, where the direction is not preempted by federal
10 law, to seek the recovery through general transmission rates of the
11 costs associated with the transmission facilities.

12 (3) Asserting the positions described in paragraphs (1) and (2)
13 to the Federal Energy Regulatory Commission in appropriate
14 proceedings.

15 ~~(4) Providing assurance, prior to a determination of rate recovery~~
16 ~~by the Federal Energy Regulatory Commission (FERC) of those~~
17 ~~costs that are subject to FERC jurisdiction, of the eligibility for~~
18 ~~recovery in retail rates of any increase in transmission costs~~
19 ~~incurred by an electrical corporation resulting from the construction~~
20 ~~of the transmission facilities. This assurance shall be conditioned~~
21 ~~upon the commission's subsequent determination that the~~
22 ~~requirements of paragraph (5) have been met.~~

23 ~~(5) Allowing recovery in retail rates of any increase in~~
24 ~~transmission costs if the FERC does not approve recovery of those~~
25 ~~costs in the rates that are subject to FERC jurisdiction after the~~
26 ~~commission determines that the costs were prudently incurred in~~
27 ~~accordance with subdivision (a) of Section 454.~~

28 (e) (1) The commission shall approve an advice letter seeking
29 assurance of cost recovery pursuant to paragraph (4) of subdivision
30 (b), if either of the following is true:

31 (A) The new transmission line or facility will primarily deliver
32 electricity generated within a competitive renewable energy zone
33 identified in the public collaborative stakeholder planning process
34 known as the Renewable Energy Transmission Initiative (RETI).

35 (B) The new transmission line or facility is needed to deliver
36 electricity to load that is to be generated by generation facilities
37 for which the electrical corporation has received interconnection
38 requests if not less than 50 percent of the capacity is for delivery
39 of electricity generated by eligible renewable energy resources
40 and all of the interconnection requests are for generation facilities

1 that are designed to comply with the greenhouse gases emission
2 performance standard established by the commission pursuant to
3 Chapter 3 (commencing with Section 8340) of Division 4.1.

4 (2) Approval of an advice letter pursuant to paragraph (1) is not
5 binding upon the commission in making its determination whether
6 or not to approve an application for a certificate of public
7 convenience and necessity pursuant to Chapter 5 (commencing
8 with Section 1001).

9 (4) *Allowing recovery in retail rates of any increase in*
10 *transmission costs incurred by an electrical corporation resulting*
11 *from the construction of the transmission facilities that are not*
12 *approved for recovery in transmission rates by the Federal Energy*
13 *Regulatory Commission after the commission determines that the*
14 *costs were prudently incurred in accordance with subdivision (a)*
15 *of Section 454.*

16 (c) (1) *The commission, prior to making a finding pursuant to*
17 *subdivision (a), may approve an advice letter from an electrical*
18 *corporation seeking, for a specific transmission project, a finding*
19 *of eligibility for cost recovery pursuant to paragraph (4) of*
20 *subdivision (b). Ultimate recovery of construction costs shall be*
21 *contingent upon the commission finding, pursuant to subdivision*
22 *(a), that the facility facilitates achievement of the renewables*
23 *portfolio standard established pursuant to Article 16 (commencing*
24 *with Section 399.11), and upon a determination by the commission*
25 *that the costs were prudently incurred pursuant to subdivision (a)*
26 *of Section 454.*

27 (2) (A) *The commission may approve cost recovery, in retail*
28 *rates, for preconstruction costs if requested in an application of*
29 *an electrical corporation for a certificate authorizing the*
30 *construction of new transmission facilities if the commission finds*
31 *that the new facility facilitates achievement of the renewables*
32 *portfolio standard established in Article 16 (commencing with*
33 *Section 399.11).*

34 (B) *The commission may approve cost recovery, in retail rates,*
35 *for preconstruction costs if requested in an application or advice*
36 *letter of an electrical corporation that seeks approval for*
37 *preconstruction costs for a potential transmission facility if the*
38 *utility certifies, at the time of filing the application, that it expects*
39 *that the facility will facilitate achievement of the renewables*
40 *portfolio standard established in Article 16 (commencing with*

1 *Section 399.11). If the request for recovery of preconstruction*
2 *costs is made in an application that the commission finds contains*
3 *an adequate showing that the costs to be incurred are reasonable,*
4 *the commission may approve recovery in retail rates without a*
5 *subsequent reasonableness review. If the request for recovery of*
6 *preconstruction costs is made in an advice letter, retail rate*
7 *recovery is contingent upon a subsequent reasonableness review,*
8 *unless otherwise ordered by the commission.*

9 *(3) The commission's determination that transmission facilities*
10 *are eligible for cost recovery pursuant to paragraph (1) or (2) is*
11 *not binding upon the commission when determining the need for*
12 *the transmission facilities pursuant to Chapter 5 (commencing*
13 *with Section 1001) or upon the commission's determination*
14 *whether the facility will facilitate achievement of the renewables*
15 *portfolio standard established in Article 16 (commencing with*
16 *Section 399.11).*

17 *(d) Any cost recovery pursuant to subdivision (b) or (c) shall*
18 *be limited to costs that are not approved for recovery in*
19 *transmission rates by the Federal Energy Regulatory Commission.*

20 SEC. 2. Section 399.12 of the Public Utilities Code is amended
21 to read:

22 399.12. For purposes of this article, the following terms have
23 the following meanings:

24 (a) "Conduit hydroelectric facility" means a facility for the
25 generation of electricity that uses only the hydroelectric potential
26 of an existing pipe, ditch, flume, siphon, tunnel, canal, or other
27 manmade conduit that is operated to distribute water for a
28 beneficial use.

29 (b) "Delivered" and "delivery" have the same meaning as
30 provided in subdivision (a) of Section 25741 of the Public
31 Resources Code.

32 (c) "Eligible renewable energy resource" means an electrical
33 generating facility that meets the definition of an "in-state
34 renewable electricity generation facility" in Section 25741 of the
35 Public Resources Code, subject to the following limitations:

36 (1) (A) An existing small hydroelectric generation facility of
37 30 megawatts or less shall be eligible only if a retail seller or local
38 publicly owned electric utility owned or procured the electricity
39 from the facility as of December 31, 2005. A new hydroelectric
40 facility is not an eligible renewable energy resource if it will cause

1 an adverse impact on instream beneficial uses or cause a change
2 in the volume or timing of streamflow.

3 (B) Notwithstanding subparagraph (A), a conduit hydroelectric
4 facility of 30 megawatts or less that commenced operation before
5 January 1, 2006, is an eligible renewable energy resource. A
6 conduit hydroelectric facility of 30 megawatts or less that
7 commences operation after December 31, 2005, is an eligible
8 renewable energy resource so long as it does not cause an adverse
9 impact on instream beneficial uses or cause a change in the volume
10 or timing of streamflow.

11 (2) A facility engaged in the combustion of municipal solid
12 waste shall not be considered an eligible renewable resource unless
13 it is located in Stanislaus County and was operational prior to
14 September 26, 1996.

15 (d) "Procure" means to acquire through ownership or contract.
16 For purposes of meeting the renewables portfolio standard
17 procurement requirements, a retail seller or local publicly owned
18 electric utility may procure either delivered electricity generated
19 by an eligible renewable energy resource that it owns or for which
20 it has entered into an electricity purchase agreement. Nothing in
21 this article is intended to imply that the purchase of electricity from
22 third parties in a wholesale transaction is the preferred method of
23 fulfilling a retail seller's obligation to comply with this article or
24 the obligation of a local publicly owned electric utility to meet its
25 renewables portfolio standard implemented pursuant to Section
26 387.

27 (e) (1) "Renewable energy credit" means a certificate of proof
28 associated with the generation of electricity from an eligible
29 renewable energy resource, issued through the accounting system
30 established by the Energy Commission pursuant to Section 399.13,
31 that one unit of electricity was generated and delivered by an
32 eligible renewable energy resource.

33 (2) "Renewable energy credit" includes all renewable and
34 environmental attributes associated with the production of
35 electricity from the eligible renewable energy resource, except for
36 an emissions reduction credit issued pursuant to Section 40709 of
37 the Health and Safety Code and any credits or payments associated
38 with the reduction of solid waste and treatment benefits created
39 by the utilization of biomass or biogas fuels.

(3) No electricity generated by an eligible renewable energy resource attributable to the use of nonrenewable fuels, beyond a de minimis quantity, ~~as determined by the Energy Commission for each renewable energy technology, to optimize reliable integration and efficiency of electrical production from eligible renewable energy resources, shall result in the creation of a renewable energy credit.~~ *used to generate electricity in the same process through which the facility converts renewable fuel to electricity, shall result in the creation of a renewable energy credit. The Energy Commission shall set the de minimis quantity of nonrenewable fuels for each renewable energy technology at a level of no more than 2 percent of the total quantity of fuel used by the technology to generate electricity. If, however, a specific facility demonstrates that a higher de minimis quantity will permit it to significantly increase its utilization of renewable fuel and reduce the variability of its electrical output, the Energy Commission may set the de minimis quantity for that facility at a level of no more than 10 percent of the total quantity of energy used by the facility to generate electricity.*

(f) “Renewables portfolio standard” means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to this article or the obligation of a local publicly owned electric utility to meet its renewables portfolio standard implemented pursuant to Section 387.

(g) “Retail seller” means an entity engaged in the retail sale of electricity to end-use customers located within the state, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard program subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3, for all sales of electricity to customers beginning January 1, 2006. The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard program. The electric service provider shall be subject to the same terms and conditions

- 1 applicable to an electrical corporation pursuant to this article.
2 Nothing in this paragraph shall impair a contract entered into
3 between an electric service provider and a retail customer prior to
4 the suspension of direct access by the commission pursuant to
5 Section 80110 of the Water Code.
- 6 (4) “Retail seller” does not include any of the following:
- 7 (A) A corporation or person employing cogeneration technology
8 or producing electricity consistent with subdivision (b) of Section
9 218.
- 10 (B) The Department of Water Resources acting in its capacity
11 pursuant to Division 27 (commencing with Section 80000) of the
12 Water Code.
- 13 (C) A local publicly owned electric utility.